UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

HUNG M NGUYEN, Plaintiff, v. YOLO COUNTY DISTRICT ATTORNEY'S OFFICE, Defendant.	No. 2:21–cv–00239–TLN–KJN PS ORDER GRANTING IFP STATUS; ORDER DENYING RECUSAL; FINDINGS AND RECOMMENDATIONS TO DISMISS WITH PREJUDICE (ECF Nos. 1, 2, 3)

Plaintiff, who proceeds in this action without counsel, has moved for the undersigned to recuse, and has requested leave to proceed in forma pauperis.[1] (ECF Nos. 2, 3.)

Plaintiff's IFP application makes the showing required by 28 U.S.C. § 1915, and so the request to proceed IFP is granted. However, the determination that a plaintiff may proceed in forma pauperis does not complete the required inquiry. Under Section 1915, the court is directed to dismiss at any time if it determines the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant.

Here, the court finds (I) plaintiff's recusal motion is insufficient, and so is denied; and (II) plaintiff's complaint is brought against an immune defendant and is otherwise frivolous, and so should be dismissed with prejudice.

[1] This case proceeds before the undersigned pursuant to E.D. Cal. Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

I. Plaintiff's Motion for Recusal

Legal Standard

Federal law allows a judge to recuse from a matter based on a question of partiality:

> Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. He shall also disqualify himself . . . [w]here he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding . . . .

28 U.S.C. 455(a), (b)(1). A party may seek recusal of a judge based on bias or prejudice:

> Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding . . . The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists[.]

28 U.S.C. § 144. Relief under Section 144 is conditioned upon the filing of a timely and legally sufficient affidavit. A judge who finds the affidavit legally sufficient must proceed no further under Section 144 and must assign a different judge to hear the matter. See 28 U.S.C. § 144; United States v. Sibla, 624 F.2d 864, 867 (9th Cir. 1980). Nevertheless, where the affidavit lacks sufficiency, the judge at whom the motion is directed can determine the matter and deny recusal. See United States v. Scholl, 166 F.3d 964, 977 (9th Cir. 1999) (citing Toth v. Trans World Airlines, Inc., 862 F.2d 1381, 1388 (9th Cir. 1988) (holding that only after determining the legal sufficiency of a Section 144 affidavit is a judge obligated to reassign decision on merits to another judge)); United States v. $292,888.04 in U.S. Currency, 54 F.3d 564, 566 (9th Cir. 1995) (if the affidavit is legally insufficient, then recusal can be denied).

The standard for legal sufficiency under Sections 144 and 455 is "'whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned.'" Mayes v. Leipziger, 729 F.2d 605, 607 (9th Cir. 1984) (quoting United States v. Nelson, 718 F.2d 315, 321 (9th Cir. 1983)); United States v. Studley, 783 F.2d 934, 939 (9th Cir. 1986). To provide adequate grounds for recusal, the prejudice must result from an extrajudicial source. Sibla, 624 F.2d 864, 867. A judge's previous adverse ruling alone is not sufficient for recusal. Nelson, 718 F.2d at 321.

Analysis

Plaintiff's motion for recusal in this case is substantively insufficient, as it alleges bias, prejudice and impartiality based solely on a previous ruling against plaintiff.[2] (See ECF No. 3 at 2-3.) It fails to allege facts to support a contention that the undersigned has exhibited bias or prejudice directed towards plaintiff from an extrajudicial source. Sibla, 624 F.2d at 868. Thus, plaintiff's allegation is not extrajudicial, does not provide a basis for recusal, and results in denial of his motion. Liteky v. United States, 510 U.S. 540, 555 (1994) ("[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion."); Studley, 783 F.2d at 939 ("In and of themselves . . . [judicial rulings] cannot possibly show reliance upon an extrajudicial source; and can only in the rarest circumstances evidence the degree of favoritism or antagonism required . . . when no extrajudicial source is involved. Almost invariably, they are proper grounds for appeal, not for recusal."); Leslie v. Grupo ICA, 198 F.3d 1152, 1160 (9th Cir. 1999) ("Leslie's allegations stem entirely from the district judge's adverse rulings. That is not an adequate basis for recusal.") (citations omitted).

II. Screening of Plaintiff's Complaint under Section 1915

Legal Standards for Screening

A federal court has an independent duty to assess whether federal subject matter jurisdiction exists, whether or not the parties raise the issue. See United Investors Life Ins. Co. v. Waddell & Reed Inc., 360 F.3d 960, 967 (9th Cir. 2004) (stating that "the district court had a duty to establish subject matter jurisdiction over the removed action *sua sponte*, whether the parties raised the issue or not"); accord Rains v. Criterion Sys., Inc., 80 F.3d 339, 342 (9th Cir. 1996). The court must dismiss the case if, at any time, it determines that it lacks subject matter jurisdiction. Fed. R. Civ. P. 12(h)(3). A federal district court generally has original jurisdiction

[2] This prior case and the instant complaint are both tied to the same underlying events. See Nguyen v Cache Creek Casino, 2:20-1748 TLN-KJN PS. In the prior case, plaintiff sued the Yocha Dehe Wintun Nation for his ejectment from casino premises, despite the fact that plaintiff was barred from entering the facility due to previous encounters with casino patrons and staff. The undersigned recommended plaintiff's case be dismissed under tribal sovereign immunity law, and the presiding district judge adopted the undersigned's recommendations in full.

over a civil action when: (1) a federal question is presented in an action "arising under the Constitution, laws, or treaties of the United States" or (2) there is complete diversity of citizenship and the amount in controversy exceeds $75,000. See 28 U.S.C. §§ 1331, 1332(a).

Further, to avoid dismissal for failure to state a claim, a complaint must contain more than "naked assertions," "labels and conclusions," or "a formulaic recitation of the elements of a cause of action." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007). In other words, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). A claim upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678. When considering whether a complaint states a claim upon which relief can be granted, the court must accept the well-pled factual allegations as true, Erickson v. Pardus, 551 U.S. 89, 94 (2007), and construe the complaint in the light most favorable to the plaintiff, see Papasan v. Allain, 478 U.S. 265, 283 (1986).

Pro se pleadings are liberally construed. See Haines v. Kerner, 404 U.S. 519, 520-21 (1972); Balistreri v. Pacifica Police Dep't., 901 F.2d 696, 699 (9th Cir. 1988). Unless it is clear that no amendment can cure the defects of a complaint, a pro se plaintiff proceeding in forma pauperis is ordinarily entitled to notice and an opportunity to amend before dismissal. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987) superseded on other grounds by statute as stated in Lopez v. Smith, 203 F.3d 1122 (9th Cir. 2000)) (en banc); Franklin v. Murphy, 745 F.2d 1221, 1230 (9th Cir. 1984). Nevertheless, leave to amend need not be granted when further amendment would be futile, as when the complaint raises legally frivolous claims. See Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 339 (9th Cir. 1996). A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327.

Analysis

Plaintiff's factual allegations are rooted in a criminal proceeding initiated against him for trespass on tribal casino grounds, wherein a member of defendant Yolo County District Attorney's office dismissed the charges a few months after plaintiff's ejection and arrest. (See ECF No. 1, Ex. B.) Plaintiff asserts the D.A.'s office wrongfully prosecuted him without any legal evidence or probable cause, and that it worked with the Yolo County Police Department to fabricate the police incident reports. Plaintiff asserts he suffered reputational harm, emotional distress, and disability discrimination (due to an alleged disability).

Liberally construed, plaintiff's complaint raises claims under the following sources of law: violations of his constitutional rights under 42 U.S.C. Sections 1983, 1985(3), 1986, and 12132; state law claims for gross negligence and intentional infliction of emotional distress; and allegations of criminal false statements and fraud under 18 U.S.C. Sections 1001 and 1031. Plaintiff seeks $100 million in compensatory and punitive damages, and requests the court to refer civil and criminal charges to the United States Attorney General. The claims raised, facts alleged in the complaint, facts drawn from the judicially-noticeable documents submitted by plaintiff, all place this case squarely in the realm of prosecutorial immunity and frivolity.

Absolute prosecutorial immunity applies for any action taken within the scope of a prosecutor's adjudicatory duties, including filing charges, initiating prosecution or any conduct integral to the judicial phase of the criminal process. Imbler v. Pachtman, 424 U.S. 409, 421-24 (1976). Further, prosecutors can obtain qualified immunity when they perform administrative or investigative functions beyond their adjudicatory role. Genzler v. Longanbach, 410 F.3d 630, 636 (9th Cir. 2005); see also Lacey v. Maricopa County, 693 F.3d 896, 912 (9th Cir. 2012). Prosecutorial immunity applies to actions under Sections 1983, 1985(3), and 1986. Imbler, 424 U.S. at 421-24 (prosecutorial immunity for § 1983 deprivation of civil rights claims); Sykes v. State of Cal. Dept. of Motor Veh., 497 F.2d 197, 200 (9th Cir. 1974) (prosecutorial immunity for Section 1985(3) conspiracy claims); see also Wagar v. Hasenkrug, 486 F.Supp.47, 50 (D. Mont. 1980) (dismissal of Section 1985 conspiracy claims ipso facto requires dismissal of 1986 claim). Prosecutorial immunity also applies to claims of disability discrimination under Section 12132.

See Edington v. Yavapai County, 2008 WL 169719, at *3 (D. Ariz. January 15, 2008). Additionally, similar claims under California state law are barred under state immunity laws. Cal. Gov't Code § 821.6 ("A public employee is not liable for injury caused by his instituting or prosecuting any judicial . . . proceeding within the scope of his employment, even if he acts maliciously and without probable cause."); see also Pagtakhan v. Alexander, 999 F. Supp. 2d 1151, 1156-60 (N.D. Cal. 2013) (applying Section 821.6 to claims for false prosecution, general negligence, and intentional infliction of emotional distress).

First, defendant has absolute prosecutorial immunity from plaintiff's allegations arising from defendant's decision to prosecute, as well as dismiss his case. Imbler, at 424 U.S. at 431. To the extent plaintiff alleges defendant "worked with" the Yolo County Sheriff's Office to fabricate the incident report, such allegations are entirely conclusory, as the judicially noticeable documents attached to the complaint show defendant was in no way involved in the writing of the incident report at issue. (See ECF No. 1, Ex. A.) (demonstrating the citation was issued by the dispatched deputy with assistance from a casino security supervisor). Once the D.A.'s office became involved, it is clear the prosecution—and not the presiding judge, as plaintiff alleges—elected to dismiss the trespass charge. (See ECF No. 1, Ex. A and B.) Therefore, there is no likelihood that plaintiff can plead any plausible facts suggesting defendants acted beyond their adjudicatory role. As such, plaintiff's federal claims under Sections 1983, 1985(3), 1986, and 12132, as well as his California state claims of "gross negligence" and intentional infliction of emotional distress, are barred by immunity.

Further, to the extent the complaint raises claims for false statements and fraud under 18 U.S.C. Sections 1001 and 1031, plaintiff, as a private citizen, has no authority to bring claims under criminal statutes. See Allen v. Gold Country Casino, 464 F.3d 1044, 1048 (9th Cir. 2006) (no private right of action for violation of criminal statutes), see also Dowdell v. Sacramento Hous. & Redevelopment Agency, 2011 WL 837046, at *2 (E.D. Cal. Mar. 8, 2011) (no private right of action under 18 U.S.C. § 1001).

Finally, given the prosecutorial immunity and frivolity of plaintiff's Section 1983 claims, his request to refer this case to the United States Attorney General should be denied. See 42

U.S.C. § 2000h-2 (stating that in actions "seeking relief from the denial of equal protection of the laws under the Fourteenth Amendment to the Constitution on account of race, color, religion, sex, or national origin, the Attorney General . . . may intervene in such action upon timely application if the Attorney General certifies that the case is of general public importance.").

For these reasons, the court recommends dismissal of plaintiff's claims. Because further amendment would be futile, the dismissal should be with prejudice. Cahill, 80 F.3d at 339.

ORDER

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion to proceed in forma pauperis (ECF No. 2) is GRANTED; and
2. Plaintiff's motion to recuse (ECF No. 3) is DENIED.

RECOMMENDATIONS

It is further RECOMMENDED that:

1. Plaintiff's complaint (ECF No. 1) be DISMISSED WITH PREJUDICE; and
2. The Clerk of Court be directed to CLOSE this case.

These findings and recommendations are submitted to the assigned United States District Judge, under 28 U.S.C. § 636(b)(l). Within fourteen (14) days after being served with these findings and recommendations, plaintiff may file written objections with the court. This document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998).

Dated: March 11, 2021

KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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